

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

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COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF CORRECTION

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and

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MASSACHUSETTS CORRECTION
OFFICERS FEDERATED UNION

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Case No.: SUP-13-2604

Date Issued: November 25, 2014

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Earl Wilson, Esq. — Representing Commonwealth of
Massachusetts, Department of Correction

Alan McDonald, Esq. — Representing Massachusetts
Correction Officers Federated Union

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1 The issue is whether the Commonwealth of Massachusetts, Department of Cor-
2 rection (Employer or DOC) violated Section 10(a)(5) and, derivatively, Section 10(a)(1)
3 of Massachusetts General Laws Chapter 150E (the Law) by transferring the bargaining
4 unit work associated with the Assistant Assignment Officer position to non-bargaining
5 unit personnel without first giving the Massachusetts Correction Officers Federated Un-
6 ion (Union or MCOFU) prior notice and opportunity to bargain to resolution or impasse
7 about the decision to transfer bargaining unit work to non-bargaining unit personnel and

1 the impact of that decision. Based on the record and for the reasons explained below, I
2 conclude that the DOC did not fail to bargain in good faith with the Union by the trans-
3 ferring bargaining unit work associated with the Assistant Assignment Officer position to
4 non-bargaining unit personnel and thus, did not violate Section 10(a)(5) and, derivative-
5 ly, Section 10(a)(1) of the Law in the manner alleged.

6 STATEMENT OF THE CASE

7
8 On February 6, 2013, MCOFU filed a Charge of Prohibited Practice (Charge)
9 with the Department of Labor Relations (DLR) alleging that the DOC violated Section
10 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Following an investigation, a du-
11 ly-designated DLR Investigator issued a Complaint of Prohibited Practice (Complaint)
12 on June 27, 2013, alleging that the DOC had failed to bargain in good faith with MCOFU
13 by transferring unit work to non-unit personnel without first giving the Union notice and
14 an opportunity to bargain over the decision to transfer the unit work and the impacts of
15 the decision. On July 5, 2013, the DOC filed its Answer. On May 30, 2014, the parties
16 filed stipulated facts and exhibits with the DLR in lieu of an evidentiary hearing. On Au-
17 gust 8, 2014, the Employer filed its post-hearing brief. On August 11, 2014, the Union
18 filed a Motion to Allow Late Filing of Post-Hearing Brief (Motion), which I granted on the
19 same day. On August 11, 2014, the Union filed its post-hearing brief.

20 STIPULATIONS OF FACT AND EXHIBITS

- 21
- 22 1. The Department of Correction ("DOC" or "Employer") is a public employer within
23 the meaning of Section 1 of G. L. c. 150E ("the Law").
24
 - 25 2. The Massachusetts Correction Officers Federated Union ("MCOFU" or "Union")
26 is an employee organization within the meaning of Section 1 of the Law.
27

- 1 3. The Union is the exclusive bargaining representative for correction officers
2 ("COs"), sergeants, and lieutenants in statewide bargaining Unit 4 who work at
3 various penal facilities in the Commonwealth.
4
- 5 4. Souza-Baranowski Correctional Center ("SBCC"), located in Shirley, Massachu-
6 setts, is one of the Employer's penal facilities where members of the Union are
7 employed. The Employer first opened SBCC in 1998.
8
- 9 5. The Superintendent and chief executive officer for SBCC is Bruce Gelb [(Gelb)].
10 Superintendent Gelb is an authorized representative for the Commonwealth un-
11 der the Law with respect to collective bargaining matters for COs who are em-
12 ployed at that facility and represented by MCOFU.
13
- 14 6. In or about 1998, the Employer assigned Sergeant Ricardo Bennett [(Bennett)], a
15 correction officer II ("CO II") within the MCOFU bargaining unit, to the post of As-
16 signment Officer. Bennett held the Assignment Officer post within the bargaining
17 unit until in or about 2009. During the period that Bennett served as Assignment
18 Officer, from approximately 2000 to 2003, he was sometimes assisted by Judy
19 Columbus [(Columbus)], a Clerk IV in Bargaining Unit 1 represented by NAGE,
20 Local 292. Ms. Columbus processed inmate payroll, a function performed by the
21 Assistant Assignment Officer. In performing the payroll function, Columbus was
22 responsible for collecting inmate payroll sheets and faxing those sheets to the
23 Treasurer's office.
24
- 25 7. As the Assignment Officer, Bennett was responsible for assigning inmates to
26 work assignments and to cell assignments.
27
- 28 8. In or about 2009, bargaining unit Sergeant Ronald Raymond [(Raymond)], a CO
29 II, was assigned to the Assignment Officer post. Raymond held the post of As-
30 signment Officer within the bargaining unit until in or about January 2013.
31
- 32 9. In or about 2009, the Employer began "double bunking" inmates at SBCC.
33
- 34 10. The duties of the Assignment Officer, with the respect to the assignment of in-
35 mates to cell assignments, increased as a result of the decision to double bunk
36 inmates. Following the commencement of double bunking, the Assignment Of-
37 ficer was required to evaluate certain criteria to determine whether inmates being
38 double bunked were compatible.
39
- 40 11. In or about 2009, at the time the Employer began double bunking inmates at
41 SBCC, the Employer began assigning a bargaining unit CO to assist the As-
42 signment Officer as needed. The CO assigned to assist the Assignment Officer
43 (the "Assistant Assignment Officer") appeared on the daily roster under the "Spe-
44 cial Details" section with the notation "Assignments."
45

- 1 12. The Assistant Assignment Officer generally performed the duties previously per-
2 formed by the Assignment Officer with respect to the assignment of inmates to
3 work assignments.
4
- 5 13. In or about July 2011, the Employer added the position Assignment CO to the
6 daily roster to designate the Assistant Assignment Officer post.
7
- 8 14. From in or about 2009 until January 2013, the duties performed by the Assistant
9 Assignment Officer were completed exclusively by members of the MCOFU bar-
10 gaining unit. The Employer assigned a CO as the Assistant Assignment Officer,
11 as necessary, from in or about 2009 until January 2013.
12
- 13 15. From in or about 2009, when the Employer first began assigning an Assistant
14 Assignment Officer, until 2011, the Employer predominately assigned CO
15 Heather Gleason [(Gleason)] as the Assistant Assignment Officer. Thereafter,
16 from approximately 2011 to January 2013, the Employer predominately assigned
17 CO David Bolduc [(Bolduc)] as the Assistant Assignment Officer. During the pe-
18 riod Gleason served as the Assistant Assignment Officer, the Assistant Assign-
19 ment Officer began inputting payroll information into a spreadsheet as a part of
20 performing the payroll function. The payroll function comprised no more than
21 20% of the Assistant Assignment Officer's duties.
22
- 23 16. On February 1, 2013, Brian Jansen [(Jansen)], then President of the Union,
24 emailed Superintendent Gelb, indicating that he learned that the Employer in-
25 tended to fill the Assistant Assignment Officer post with a Correctional Program
26 Officer. Jansen requested that the DOC cease and desist from such a plan.
27
- 28 17. Correctional Program Officers (CPOs) are not part of Unit 4 but are instead part
29 of Unit 8, represented by the Alliance AFSCME/SEIU, Local 509.
30
- 31 18. On February 1, 2013, Superintendent Gelb replied to Jansen by email, indicating
32 that effective Monday, February 4, 2013 a CPO would be assigned to assist the
33 Assignment Officer. This was the first notice the Union received regarding the
34 proposed change. Gelb indicated that he was acting within his rights under Arti-
35 cle 25 of the parties' collective bargaining agreement entitled "Managerial
36 Rights/Productivity."
37
- 38 19. Beginning on February 4, 2013, and continuing to date, a CPO was assigned, as
39 necessary, to provide assistance to the Assignment Officer. Since February of
40 2013 and continuing, no member of Unit 4 has been assigned to assist the As-
41 signment Officer. The assignment of a CPO, as necessary, to assist the Assign-
42 ment Officer did not result in the reduction of any Unit 4 positions at SBCC.
43
- 44 20. The CPO assigned to assist the Assignment Officer performs the duties per-
45 formed exclusively by the Assistant Assignment Officer from in or about 2009 un-
46 til January 2013.

1
2 21. The DOC operates a total of 18 facilities. At MCI-Norfolk, Pondville Correctional
3 Center and South Middlesex Correctional Center, the duties of Assignment Of-
4 ficer and Assistant Assignment Officer, if needed, are performed by CPOs. No
5 members of bargaining Unit 4 are assigned at Pondville Correctional Center and
6 South Middlesex Correctional Center. At SBCC, the performance of the duties of
7 the Assignment Officer is in dispute. At the remaining 14 facilities where mem-
8 bers of bargaining Unit 4 are deployed, the duties of the Assignment Officer are
9 performed exclusively by a member of bargaining Unit 4.¹

10
11 Supplementary Facts²

12 **The Collective Bargaining Agreement**

13 On January 25, 2011, the parties entered into a single collective bargaining
14 agreement (Agreement) covering the periods from July 1, 2009 to June 30, 2010 and
15 July 1, 2010 to June 30, 2013. Article 1, Recognition, Section 1 stated, in pertinent part,
16 “The Commonwealth recognizes the Union as the exclusive collective bargaining repre-
17 sentative for employees of the Commonwealth in Bargaining Unit 4, as certified by the
18 [DLR] in its certification of representation, Case No. SCR-2216, dated December 22,
19 1994. Article 25, Managerial Rights/Productivity, stated in pertinent part:

20 Section 1.

21 Except as otherwise limited by an express provision of this Agreement, the
22 Employer shall have the right to exercise complete control and discretion
23 over its organization and technology including but not limited to the deter-
24 mination of the standards of services to be provided and standards of
25 productivity and performance of its employees; establish and/or revise
26 personnel evaluation programs; the determination of the methods, means
27 and personnel by which its operations are to be conducted; the determina-
28 tion of the content of job classifications; the appointment, promotion, as-
29 signment, direction and transfer of personnel; the suspension, demotion,

¹ The record does not indicate whether the Employer assigned other employees (i.e., besides CPOs or unit members) to perform the duties of the Assistant Assignment Officer position at the remaining 14 facilities.

² The supplemental facts come from the joint exhibits submitted by the parties.

1 discharge or any other appropriate action against its employees; the relief
2 from duty of its employees because of lack of work or for other legitimate
3 reasons; the establishment of reasonable work rules; and the taking of all
4 necessary actions to carry its mission in emergencies.

5
6 Section 2.

7
8 Delivery of services to the public in the most efficient, effective, and pro-
9 ductive manner is of paramount importance to the Employer and the Un-
10 ion. Such achievement is recognized to be a goal of both parties as they
11 perform their respective roles and meet their responsibilities.

12
13 Section 3.

14
15 It is acknowledged that during the negotiations which resulted in this
16 Agreement, the Union had the unlimited right and opportunity to make
17 demands and proposals with respect to all proper subjects of collective
18 bargaining. Therefore, for the life of the Agreement, this Agreement shall
19 constitute the total Agreement between the parties and the Union agrees
20 that the Employer shall not be obligated to any additional collective bar-
21 gaining.

22
23 **The Class Specification**

24 Revised in March of 2007, the Commonwealth of Massachusetts, Human Re-
25 sources Division issued the Class Specification for the CPO, which described the posi-
26 tion's job characteristics and stated, in pertinent part:

27 Based on assignment, employees in this series provide non-therapeutic
28 counseling, rehabilitation, or custodial care and treatment to inmates; per-
29 form classification duties; interview inmates; obtain inmate criminal histo-
30 ries through correspondence with other Law Enforcement agen-
31 cies...facilitate, collect and analyze assessment information; counsel in-
32 mates on programming and placement recommendations available in ac-
33 cordance with established placement criteria and individual needs; and
34 describe, explain, or answer inquiries regarding institutional rules, regula-
35 tions, policies, procedures, programming, custody levels, classification,
36 and institutional placement....Employees in this series may work as gen-
37 eralists or be assigned to one of the following specialty areas:

- 38
39 • Correctional Program Officers (Classification) obtain, review, ana-
40 lyze and prepare summarized reports of information obtained
41 through inmate records, interviews, personal observation and as-
42 sessments and court documents; make recommendations regard-

ing inmate placement and programming needs in the Department of Correction; and interact with inmates in housing units and service, work, program and recreation areas.

- Correctional Program Officers (Housing Assignment Officer) assigns inmates their units, rooms and beds.
- Correctional Program Officers (Job Assignment Officer) assigns inmates to institutional jobs and assures compliance with the community work crew policy.

The Daily Shift Rosters

On the DOC's October 7, 2010 SBCC daily shift roster, the Employer scheduled approximately 140 employees to approximately 160 possible position assignments on the 7:00 a.m. to 3:00 p.m. shift. Under "Special Details" section on the roster, the Department scheduled Gleason to the "Assignments" position on the 7:00 a.m. to 3:00 p.m. shift. On the DOC's August 11, 2011 SBCC daily shift roster, the Employer scheduled Gleason to the "Assignment C.O." position on the 7:00 a.m. to 3:00 p.m. shift.

The E-mail Correspondence

By e-mail on February 1, 2013 at 3:57 p.m., Union President Jansen contacted Superintendent Gelb, stating in pertinent part:

It is my understanding that SBCC intends to fill the assistant assignment officer position with a correctional program officer. This position, previously being held by a correction officer. The MCOFU objects to any assignment of a correctional program officer to this correction officer position and would ask that you cease and desist from any such plan immediately.

By reply e-mail on February 1, 2013 at 4:22 p.m., Superintendent Gelb responded to Jansen, stating in pertinent part:

Brian, this assignment that you are referring to was the job assignment, that assisted the assignment officer which is a supt. pick position, which in fact was done by one person for many years. The job assignment post was one that...has never existed in the facilities' FTE formula. It was also a post that was pulled almost on a daily basis. We have not eliminated a

1 C.O. from the roster, he has been reassigned. In order to have a better
2 control of the inmate climate, I have decided to have a CPO assigned
3 there effective Monday, Feb. 4th.
4

5 I believe in accordance with Article 25 of the CBA I am within my rights to
6 do this. I certainly welcome any further discussion.³
7

8 DECISION
9

10 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law
11 when it unilaterally changes an existing condition of employment or implements a new
12 condition of employment involving a mandatory subject of bargaining without first giving
13 its employees' exclusive bargaining representative notice and an opportunity to bargain
14 to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations Com-
15 mission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations Com-
16 mission, 388 Mass. 557 (1983). The Law requires a public employer to give the exclu-
17 sive collective bargaining representative of its employees prior notice and an opportuni-
18 ty to bargain before transferring bargaining unit work to non-bargaining unit personnel.
19 Commonwealth of Massachusetts v. Labor Relations Commission, 60 Mass. App. Ct.
20 831 (2004).

21 The Commonwealth Employment Relations Board (Board) holds that the unilat-
22 eral transfer of job duties from unit employees to non-unit employees violates an em-
23 ployer's bargaining obligation under Section 10(a)(5) of the Law. Commonwealth of
24 Massachusetts, 35 MLC 105, 108, SUP-04-5054 (Dec. 10, 2008) (citing City of Boston,
25 26 MLC 144, 146, MUP-1085 (May 10, 2000), aff'd sub nom., City of Boston v. Labor
26 Relations Commission, 58 Mass. App. Ct. 1102, further rev. den'd, 440 Mass. 1106

³ The record contains no evidence of subsequent communication between the parties over this issue.

(2003)); Board of Regents of Higher Education, 19 MLC 1485, 1487-88, SUP-3376 (October 23, 1992) (citing City of Quincy, 15 MLC 1239, 1240, MUP-6490 (Nov. 9, 1988)).

To determine whether that a public employer has unlawfully transferred bargaining unit work, the Board looks for evidence that: (1) the employer transferred bargaining unit work to non-unit personnel; (2) the transfer of unit work to non-unit personnel had an adverse impact on individual employees or the unit itself; and (3) the employer failed to give the union prior notice and an opportunity to bargain over the decision to transfer the work. Commonwealth of Massachusetts, 60 Mass. App. Ct. at 833; see also Lowell School Committee, 28 MLC 29, 31 (2001); Higher Education Coordinating Council, 23 MLC 90, 92, SUP-4090 (Sept. 17, 1996); City of Gardner, 10 MLC 1218, 1219, MUP-4917 (Sept. 14, 1983).

Transfer of Bargaining Unit Work

To establish the first element of its prima facie case for unilateral transfer, the Union must show that the duties of the Assistant Assignment Officer position have been exclusively performed by bargaining unit employees. City of Boston, 29 MLC 122, 124, MUP-2419 (Jan. 15, 2003) (citing Higher Education Coordinating Council, 23 MLC at 92)); City of New Bedford, 15 MLC 1732, 1736, MUP-6488 (May 31, 1989). In determining whether the Employer transferred bargaining unit work to non-unit personnel, it is necessary to define the scope of the bargaining unit work. City of Quincy, 15 MLC at 1240. In analyzing what constitutes bargaining unit work, the Board focuses on the nature of the functions performed. City of Boston, 29 MLC at 124-25 (citing Town of Norwell, 13 MLC 1200, 1207-08, MUP-5655 (Oct. 15, 1986)). When bargaining unit members and non-unit employees share work, the Board will not recognize the work as

1 belonging exclusively to the bargaining unit. Higher Education Coordinating Council, 23
2 MLC at 92.

3 Here, the Union argues that the duties of the Assistant Assignment Officer posi-
4 tion constitute exclusive bargaining unit work because the DOC exclusively assigned
5 those duties to Unit 4 members between 2009 and 2013. The Employer contends that
6 the duties of the Assistant Assignment Officer position have not been exclusively per-
7 formed by members of bargaining Unit 4 because, historically, those duties have been
8 shared by non-bargaining members beginning with NAGE Clerk IV Judy Columbus (Co-
9 lumbus) who performed the inmate payroll duties of the Assistant Assignment Officer
10 position between 2000 and 2003. The Employer also contends Assistant Assignment
11 Officer duties have been shared with non-bargaining unit CPOs who perform those du-
12 ties at the DOC's MCI-Norfolk, Pondville and South Middlesex Correctional Centers.
13 Further, pursuant to their class specification, the Employer asserts that CPOs also per-
14 form housing and job duties, when needed.

15 From 1998 until 2000, the duties of the disputed Assistant Assignment Officer
16 position, including collecting and forwarding inmate payroll information, were performed
17 by unit member Bennett whom the Employer assigned as the Assignment Officer. From
18 2000 to 2003, the duties of collecting and forwarding inmate payroll information were
19 shared between Assignment Officer Bennett and Clerk IV Columbus, after the Employer
20 determined that on certain occasions Bennett would need assistance with those tasks.
21 At some point after 2003, the Employer stopped assigning Columbus to assist Bennett
22 at the SBCC, and instructed Bennett to exclusively perform the duties of both his posi-
23 tion as Assignment Officer and Columbus' former duties of processing inmate payroll

1 information. Beginning in 2009, the Employer exclusively and consistently assigned
2 members of bargaining Unit 4 to the position of Assistant Assignment Officer. Like Co-
3 lumbus, the Employer assigned these unit members to the Assistant Assignment Officer
4 position, on an-as-needed basis.

5 Although Columbus may have shared the duties of the Assistant Assignment Of-
6 ficer position with bargaining unit member Bennett between 2000 and 2003, the Em-
7 ployer terminated that practice of work-sharing in 2003 when Bennett began performing
8 those duties exclusively, without any assistance, for approximately six consecutive
9 years between 2003 and 2009. Beginning in 2009 and continuing until February 4,
10 2013, the Employer exclusively assigned unit members to assist Bennett (and later
11 Raymond) as the Assistant Assignment Officer at the SBCC. Between 2009 and 2013,
12 those unit members performed the duties of the Assistant Assignment Officer position
13 on an uninterrupted, as-needed basis.

14 While the class specification indicates that the duties of CPOs include housing
15 and job assignments, and CPOs actually perform those duties at the DOC's other facili-
16 ties, there is no evidence that any CPO ever performed the work of Assistant Assign-
17 ment Officer at the SBCC facility prior to February 4, 2013. Instead, the stipulated rec-
18 ord shows that between 2009 and 2013, the DOC exclusively assigned members of
19 bargaining Unit 4 to perform the duties of Assistant Assignment Officer at the SBCC,
20 even though assignments to that position were made on an as-needed basis. While the
21 staff composition at the SBCC is different from the composition at the DOC's other facili-
22 ties (especially in terms of where the Employer deploys Unit 4 members), the evidence
23 shows that the Employer exclusively deployed bargaining unit members to the Assistant

1 Assignment Officer position at the SBCC for four consecutive years. Thus, I find that
2 the disputed work of the Assistant Assignment Officer position at the SBCC had been
3 exclusively performed by members of the MCOFU bargaining unit. City of
4 New Bedford, 15 MLC at 1736.

5 However, where an employer has multiple facilities and assigns employees to the
6 same position where they perform the same duties at those facilities, the Board will ex-
7 amine the employer's pattern of assignment of those duties at all of the facilities rather
8 than looking only at one facility. City of Boston, 29 MLC at 124-25 (citing Town of Nor-
9 well, 13 MLC at 1207-08). When work is shared by bargaining unit members and non-
10 unit employees, the Board has determined that the work will not be recognized as ex-
11 clusively bargaining unit work. City of Quincy, 15 MLC at 1240; City of Boston, 10 MLC
12 1539, 1541, MUP-4967 (April 24, 1984); City of Boston, 26 MLC at 146. In those cases,
13 the Board focuses on the pre-existing pattern of shared work and the impact that any
14 change in the pattern may have on the bargaining unit. City of Boston, 29 MLC at 125
15 (citing City of Boston, 26 MLC at 147). An employer may not unilaterally alter a pre-
16 existing pattern of shared work. City of Boston, 29 MLC at 125 (citing City of Boston, 28
17 MLC 194, 195, MUP-2185 (Jan. 4, 2002)).

18 Here, the Employer's pre-existing pattern of assignment shows that it assigns
19 employees to perform the duties of Assignment Officer and/or Assistant Assignment Of-
20 ficer at all of its 18 facilities. At three of those facilities, it exclusively assigns CPOs to
21 perform the duties of both those positions, on an-as needed basis. At one facility (i.e.
22 SBCC), it exclusively assigns unit members to perform the duties of the Assignment Of-
23 ficer position from 1998 to present. At that same facility, it also exclusively assigned

1 unit members to perform the duties of the Assistant Assignment Officer position, on an
2 as-needed basis, for four consecutive years between 2009-2013. At the remaining 14
3 facilities, the Employer only assigns unit members to perform the duties of Assignment
4 Officer.

5 While the Employer exclusively assigned unit members to the perform the duties
6 of Assistant Assignment Officer at the SBCC between 2009 and 2013, its decision to
7 assign CPOs to that position at that facility on February 1, 2013 did not change the pre-
8 existing pattern of how CPOs and unit members shared the work of the Assistant As-
9 signment Officer position at the DOC's remaining 17 facilities. This is because while the
10 Employer only assigned unit members to exclusively perform the duties of the Assistant
11 Assignment Officer position at the SBCC, on an as-needed basis; it contemporaneously
12 and exclusively assigned non-unit members to perform those same duties at the Pond-
13 ville Correctional Center and South Middlesex Correctional Center. Based on the rec-
14 ord, I find that the Union failed to show that the Employer's change in 2013 of exclusive-
15 ly assigning CPOs instead of unit members to the position of Assistant Assignment Of-
16 ficer at the SBCC, amounted to anything more than an incidental variation in job as-
17 signments between unit and non-unit employees because the disputed work is shared
18 with non-unit members in other facilities at the DOC; thus, obviating the Employer's
19 need to bargain. City of Boston, 29 MLC at 125 (citing Town of Saugus, 28 MLC 13, 17,
20 MUP-2343 and CAS-3388 (June 15, 2001); City of Somerville, 23 MLC 256, 259, MUP-
21 8160 (May 2, 1997)).

22 **Calculated Displacement**

1 In the alternative, the Union argues that even if the AAO's duties were shared
2 work, the Department's decision to transfer those duties on February 4, 2013, constitut-
3 ed a calculated displacement of unit work over which the Department was obligated to
4 bargain because the transfer decreased the work performed by Unit 4 members from
5 one to zero, while doubling the amount of work assigned to non-Unit 4 members.

6 An employer is required to bargain over a calculated displacement of unit work.
7 City of Boston, 26 at 146 (citing Higher Education Coordinating Council, 23 MLC at 92).
8 If bargaining unit members had performed an ascertainable percentage of work and the
9 employer significantly reduces a portion of that work along with a corresponding in-
10 crease the same work performed by non-unit employees, such action may demonstrate
11 a calculated displacement unit work. City of Boston, 29 MLC at 125 (citing Common-
12 wealth of Massachusetts, 27 MLC 52, 56, SUP-4091 (Nov. 21, 2000); City of New Bed-
13 ford, 15 MLC at 1737).

14 However, I do not find any calculated displacement of the work shared between
15 the CPOs and the unit members because even though the number of unit members
16 who exclusively performed the duties of the Assistant Assignment Officer at the SBCC
17 went from one to zero in 2013, and while a corresponding number of CPOs performing
18 that same work went from zero to one at the SBCC during that time, there is no evi-
19 dence that the unit members performed an ascertainable percentage of that work on a
20 system-wide basis. Instead, between 2009 and 2011, and 2011 to 2013, the Employer
21 assigned unit members Gleason and Bolduc, respectively, to perform the duties of the
22 AAO position at the SBCC, on an exclusive and as-needed basis. Likewise, the Em-
23 ployer also deployed CPOs to exclusively perform the same work at three other facili-

1 ties, also on an as-needed basis. Thus, while the Employer's February 4, 2013 change
2 may have impacted the pre-existing pattern of shared work at the SBCC, it did not im-
3 pact the pattern on a system-wide basis. City of Boston, 29 MLC at 125 (citing Town of
4 Norwell, 13 MLC at 1208). Based on this evidence, I cannot find that the Employer's
5 decision to transfer the job duties of the Assistant Assignment Officer position at the
6 SBCC to employees outside of the bargaining unit on February 4, 2013, amounted to an
7 unlawful calculated displacement of unit work over which it was obligated to bargain be-
8 cause the Union cannot show that unit members performed an ascertainable percent-
9 age of that work for the Employer on a facility-wide basis or that the CPOs experienced
10 a corresponding increase in the work performed. City of Boston, 29 MLC at 125 (citing
11 Commonwealth of Massachusetts, 27 MLC at 56).

12 CONCLUSION

13 Based on the record and for the reasons explained above, I conclude that the
14 DOC did not violate section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when
15 it transferred the job duties of Assistant Assignment Officer at the SBCC away from unit
16 members to non-bargaining unit personnel on February 4, 2013. Accordingly, I dismiss
17 the Complaint in its entirety.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

KENDRAH DAVIS, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.